

**PT 03-25**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**SLOVENIAN CULTURAL CENTER  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**NO: 02-PT-0032  
(00-16-2604)  
PINS: 22-22-102-004  
22-22-102-005**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Messrs. Gregory Lafakis and Brandon Williams of Liston and Lafakis on behalf of the Slovenian Cultural Center (the “Applicant” or the “Center”); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

**SYNOPSIS:** This matter raises the following issues: (1) whether the applicant has standing to bring a complaint seeking to exempt real estate identified by Cook County Parcel Index Numbers 22-22-102-004 and 22-22-102-005 (hereinafter referred to in the collective as the “subject property”) from 2000 real estate taxes under Sections 15-35, 15-40 and/or 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq*; and, (2) whether the subject property, or any specifically identifiable portion thereof, was leased or otherwise used with a view to profit, in violation of Sections 15-35, 15-40 and/or 15-65(a) of the Property Tax Code during the 2000 assessment year, and, (3) if said property was not so leased, then whether the subject property as a whole, or specifically identifiable portions thereof, were used for purposes that would qualify it for exemption

from 2000 real estate taxation under Sections 15-35, 15-40 and/or 15-65(a) of the Property Tax Code.

The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the “Board”) on March 14, 2001. Dept. Group Ex. No. 1. This Complaint, and the accompanying Departmental Application form, named the applicant, Center, as lessee of the subject property under terms of a lease, dated November 1, 1990, with the lessor-owner of said property, the Commissariat of the Holy Cross (the “Commissariat”).<sup>1</sup> *Id.*

The Board reviewed applicant’s complaint and recommended to the Department that most of the subject property, except for a 2,500 square foot portion thereof, be exempt from real estate taxation for the entire 2000 tax year. *Id.* The Department, however, rejected the Board’s recommendation by issuing a determination, dated March 28, 2002, which denied the requested exemption *in toto* on grounds that:

APPLICANT IS NOT THE OWNER OF THE PROPERTY.  
APPLICANT IS NOT ASSESSED ON THE PROPERTY.  
APPLICANT IS LESSEE OF THE PROPERTY. NO  
LEASEHOLD ASSESSMENT HAS BEEN MADE FOR THE  
ASSESSMENT YR FOR WHICH APPLICATION HAS BEEN  
MADE. [SIC].

*Id.*

Applicant filed an appeal as to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department’s initial determination be reversed as to the standing issue but otherwise affirmed.

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1. Mr. James D. Murphy, Attorney at Law, appeared on behalf of the Commissariat.

## **FINDINGS OF FACT:**

### **A. PRELIMINARY MATTERS AND HISTORICAL BACKGROUND**

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is, in substance, that the applicant, Center, lacks standing to bring the present exemption complaint. Dept. Ex. No. 1.
3. The subject property is located in Lemont, IL and improved with a one story, 14,537 square foot building. *Id.*
4. Applicant leased the subject property from its titled owner, the Commissariat, throughout the 2000 assessment year. *Id.*; Applicant Ex. Nos. 3, 5, 27.
5. The Commissariat is an Illinois not-for-profit corporation organized for purposes of maintaining an Order of Franciscan Friars within the Roman Catholic Church. Applicant Ex. Nos. 7, 23, 24, 26
6. The Commissariat's main facility, a Catholic Mission and Monastery that is located immediately adjacent to the subject property, was exempted from real estate pursuant to the Department's determination in Docket No. 88-16-146. This exemption remained in full force and effect throughout the 2000 assessment year. Dept. Group Ex. No. 1; Applicant Ex. Nos. 7, 28.
7. On October 12, 1978, the Circuit Court of Cook County entered a permanent injunction exempting the subject property from 1976 and 1977 real estate taxes in that chancery proceeding entitled "Commissariat of the Holy Cross v. Rosewell, et al.," Docket No. 77 CH 8216. Applicant Ex. Nos. 4, 13.

8. The exemption granted under terms of this injunction remained in effect until 1998, when the Cook County Assessor's Office (the "Assessor") was informed that the Commissariat was leasing the subject property to the applicant. *Id.*
9. After being informed of this lease, the Assessor placed the subject property back on the tax rolls and assessed taxes on this property for 1998 and all tax years subsequent thereto. Applicant Ex. Nos. 13, 27.
10. The Assessor's records mistakenly showed the Center to be the owner of record. The Center was, in fact, the lessee of the subject property, which continued to be owned by the Center's lessor, the Commissariat, throughout 1998 and all subsequent tax years. Applicant Ex. Nos. 3, 13.
11. Due to this mistake in the Assessor's records, the Center, and not the Commissariat, was billed for all of the real estate taxes levied against the subject property for 1998 and all subsequent years. Applicant Ex. Nos. 1, 2, 13.

#### **B. APPLICANT'S ORGANIZATIONAL STRUCTURE**

12. Applicant, an Illinois not-for-profit corporation, is exempt from federal income tax pursuant to the terms of a determination issued by the Internal Revenue Service on July 31, 1992, which found that applicant qualified as a corporation "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" within the meaning of Section 501(c)(3) of the Internal Revenue Code, 26 USCA §501(c)(3). Applicant Ex. Nos. 6-A, 6-B, 9.
13. Applicant's by-laws indicate that it is organized:

... for the purpose of promoting, encouraging, and fostering, in the context of the American society, the ideals of the Slovenian heritage, based on the Christian religious, ethical and cultural values. To that end, the corporation shall acquire, by long term lease or otherwise, real estate

property in the Township of Lemont, Illinois, on which property the corporation shall build an assembly hall to be used as a meeting place for the members of the corporation, their families and guests, in order to carry on cultural, literary, social, educational, charitable and sports activities as well as religious activities (in cooperation with and under the guidance of the Slovene Franciscan Fathers of the Commissariat of the Holy Cross). The corporation shall provide and maintain on the premises a library as well as rooms dedicated to educational purposes. The premises may also be used by the corporation as a facility for banquets, dinners, weddings, picnics and the like.

Applicant Ex. No. 6-B.

14. Applicant's by-laws further state, *inter alia*, that:

- A. Membership in the Center is open to any person of Slovene descent, his or her spouse and children if other than 18 years of age;
- B. All prospective members must submit a membership application, which must be approved by the board of directors that governs applicant's operations;
- C. Applicant's board of directors shall consist of no less than 8 and no more than 23 directors, of which 3 directors must be elected from among the Franciscan Fathers serving at the Commissariat;
- D. Applicant's board of directors shall elect from among the Franciscan Fathers serving at the Commissariat a spiritual director for the Center;<sup>2</sup>
- E. The board of directors may periodically determine what, if any, amount the Center may charge as an initiation fee for members;
- F. The board of directors may also establish the amount of annual dues that its members shall pay;

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2. Applicant's by-laws do not prescribe any specific duties for the Center's spiritual director. Applicant Ex. No. 6-B.

- G. All such dues shall be payable in advance on the first day of March of each of applicant's fiscal years;<sup>3</sup>
- H. When any member shall be in default in the payment of dues for a period of 12 months from the beginning of the fiscal year or period for which such dues become payable, his membership may thereupon be terminated by the board of directors by a majority vote of those present at any regularly constituted meeting;
- I. The board of directors shall by resolution, provide the terms and conditions for the rental of the Center's facilities to the members and to third parties, provided, however that the members and their families shall "in principle" have a priority to the use of the facilities and shall be entitled to a discount from the applicable rental rates established from time to time for third parties by the board of directors; and,
- J. The board of directors may periodically adopt guidelines including the appropriate terms and conditions applicable to the rental of the center's facilities to other Slovenian organizations or to organizations closely related to them.

Applicant Ex. No. 6-B.

15. The Center had over 400 members and charged membership dues of \$100.00 per family during 2000.<sup>4</sup> Tr. pp. 54-55.

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3. Applicant's by-laws merely authorize its board of directors to establish a fiscal year. They do not, however, contain any information indicating the parameters of whatever fiscal year applicant may follow. Applicant Ex. No. 6-B.

4. The record does not indicate whether applicant charged any initiation fees during 2000. Nor does it contain any financial statements or other evidence identifying

16. Applicant's by-laws and articles of incorporation do not contain any language that waives or reduces any initiation fees it may charges or its mandatory membership dues for those who are unable to pay. Applicant Ex. No. 6-B.

**B. LEASE PROVISIONS**

17. The lease between applicant and the Commissariat provides, *inter alia*, that:

- A. The term of the lease shall run for a period of 99 years, which period shall commence November 1, 1990 and end October 31, 2089;
- B. Applicant shall pay the Commissariat the sum of \$100.00 per year on November 1 of each year of the lease term as rental for the premises;
- C. Applicant shall use the leased premises, and the building improvement it constructs thereon:

... for the pursuit of its corporate purposes, that is to promote, encourage and foster, in the context of the American Society, the ideals of the Slovenian Heritage, founded on Christian religious, ethical, and cultural values. Toward that end, [applicant] shall provide and operate an assembly hall to be used as a meeting place for the members of the Slovenian Cultural Center, their families and guests, in order to carry on cultural, literary, social, educational, charitable and sports activities as well as religious activities in cooperation with and under the guidance of the Commissariat of the Holy Cross. [Applicant] shall provide and maintain on the premises a library as well as rooms dedicated to educational purposes. [Applicant] may also use the premises as a facility for banquets, dinners, weddings, picnics and the like.

[Applicant] shall endeavor to use these premises and conduct its activities on the premises in a manner which shall show respect for the religious nature of the [Commissariat's] mission.

- D. Applicant shall pay any and all property taxes levied or assessed against the leased premises within 20 days of the date shall become due and

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the Center's revenue sources and expenses items for that tax year. See, *infra*, at pp. 26,

- payable, provided that applicant shall also have the right to institute appropriate proceedings, in its name or in the name of the Commissariat, to contest the validity of any such levy or assessment;
- E. The Commissariat shall, at all times during the lease term, retain the option to pay any taxes or assessments levied against the leased property, and/or to clear off, redeem or otherwise extinguish all tax sales or other similar claims against said property, and, after making any such payment, collect the amount thereof as additional rent from the applicant, together with interest thereon at the rate of 10% per annum from the date of the payment by the Commissariat until the date on which applicant repays the amount in full; and,
- F. If, at any time during the lease term, the Commissariat should vacate its adjoining Monastery, or cease conducting its activities thereat, then the leased premises shall become property of the applicant, with the Commissariat being responsible for conveying said premises to the applicant at no additional cost.

Applicant Ex. No. 5.

**C. FLOOR PLAN OF BUILDING IMPROVEMENT**

18. The subject property is improved with a one story, 14,537 square foot building that is divided into the following areas:

	Total	% of Total
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30-31.



Area	Square Footage	Square Footage
Auditorium	7,085 sq. ft. <sup>5</sup>	49%
Vestibule	180 sq. ft.	1%
Lobby	1,152 sq. ft.	8%
Lounge	112 sq. ft.	<1%
Ancillary Area	612 sq. ft.	4%
First Kitchen Area	378 sq. ft.	3%
Second Kitchen Area	540 sq. ft. <sup>6</sup>	4%
Hallway, Janitor Closet and Coat Room	238 sq. ft.	2%
Men's & Women's Toilets	576 sq. ft.	4%
Ancillary Area	24 sq. ft.	<1%
Class Room	1,610 sq. ft.	11%
Lounge	810 sq. ft.	6%
Library	621 sq. ft.	4%
Ancillary Exit, Storage Room & Mechanical Area	230 sq. ft.	2%
Office	204 sq. ft.	1%
Storage	165 sq. ft.	1%
<b>Totals</b>	<b>14,537 sq. ft.</b>	<b>100%</b>

Applicant Ex. No. 10.

### C. USAGE ISSUES

19. Applicant allowed its members to rent out the Center's facilities for wedding receptions and other celebrations that its members hosted during 2000.<sup>7</sup> Tr. pp. 50-51.

20. Applicant would allow non-members to rent the Center's facilities for a wedding reception or other similar occasion only if the individual seeking to use the facilities obtained sponsorship from a member. *Id.*

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5. Includes a 270 sq. ft. mechanical room and 272 sq. ft. of dressing and rest room areas shown on Applicant Ex. No. 10.

6. Includes a 216 sq. ft. ancillary storage and mechanical room shown on Applicant Ex. No. 10.

7. The uses described in this and all subsequent findings of fact shall be understood to be uses that took place during the 2000 assessment year unless context clearly specifies otherwise.

21. Applicant charged each user an unspecified rental fee for use of the Center's facilities. Applicant did not, however, submit any financial statements or other evidence indicating the amount of income it received from such rental fees during 2000.<sup>8</sup> *Id.*
22. Applicant used the auditorium for various social and cultural gatherings of its membership throughout 2000. These gatherings included monthly dinners on the second Sunday of each month, a New Year's eve party, an annual picnic, a Halloween party and various Slovenian cultural events. Applicant Ex. No. 14; Tr. p. 47.
23. The auditorium was also used for masses, which priests from the Commissariat celebrated on irregular occasions when the size of the congregation expected to attend the mass was so large that it exceeded the seating capacity of the chapel located in the Commissariat's nearby Mission. The auditorium was, however, used on a more regular basis for gatherings that took place after the Sunday masses that were celebrated at the Commissariat's chapel. Tr. pp. 18, 20, 28, 33, 47, 49-50.
24. The classroom space was used as applicant's "Slomšek Slovenian School," which met on Saturday mornings from October through mid-May. Applicant Ex. No. 14; Tr. p. 58.
25. The "Slomšek Slovenian School" was not accredited by the State of Illinois but was attended by over 60 students. Some of the students were adults, but most were children who were attending kindergarten through 8<sup>th</sup> grade at other schools. Tr. pp. 50-51, 58.

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8. The financial statements submitted as part of Applicant Ex. No. 9 were for tax years prior to 2000. *See, infra*, at p. 26.

26. Those who attended the school received instruction in subjects related to Slovenian history and culture. They also received some instruction in religious practices followed at Slovenian churches.<sup>9</sup> Applicant Ex. No. 14; Tr. pp. 49-50.
27. Applicant charged registration fees to anyone who wished to attend the “Slomšek Slovenian School.” Applicant Ex. No. 14.
28. The registration fees were \$20.00 per student for members or children of members, with a maximum fee of \$60.00 per family or \$40.00 per student for non-members or children of non-members, with a maximum of \$120.00 per family. Applicant Ex. No. 14.
29. Applicant leased a 2,750 square foot portion of land situated on the subject property<sup>10</sup> to SprintCom for purposes of constructing and maintaining an equipment base and antenna that was to be used in furtherance of SprintCom’s commercial telecommunications business. Applicant Ex. No. 15.<sup>11</sup>

### **CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

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9. *See also, infra*, at pp. 27-31.

10. The 2,750 square feet that was subject to this lease was divided into two areas. The first was a 2,500 square foot area that contained the actual antenna base and equipment facility; the second was a 250 square foot gravel road that SprintCom used for access to the antenna base and equipment facility under terms of a usage easement granted in the lease. Applicant Ex. No. 14.

11. For further information and analysis concerning overall use issues, *see, infra*, at pp. 15-31.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, wherein the following are exempted from real estate taxation:

**200/15-40. Religious purposes, orphanages, or school and religious purposes**

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent, or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

**35 ILCS 200/15-40.**

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, the “religious purposes” contemplated by Section 15-40 are those which involve the use of real estate by religious societies or persons as a stated places for public worship, Sunday schools and religious

instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

#### **A. STANDING ISSUE**

Before deciding the substantive issue of exempt use under Section 15-40, it is first necessary to decide the threshold question, raised in the Department's initial determination, of whether applicant has standing to bring this exemption complaint. Standing issues rarely arise in exemption cases because the titled property owner, which is liable for real estate taxes under Section 9-175 of the Property Tax Code,<sup>12</sup> is also the applicant in most cases. Because Section 9-175 imposes this liability, the owner's standing is not questioned, as the owner is presumed to have "a direct and substantial" financial interest in the outcome of the exemption proceeding. Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991).

In this case, however, the entity that owns the subject property is not the applicant herein. The owning entity, the Commissariat, is an Illinois not-for-profit corporation that is separately incorporated from the entity that is the applicant herein, the Center. As such, the Commissariat enjoys a legal identity that is separate and distinct from that of the applicant. Consequently, only the Commissariat can benefit from the statutory grant of standing contained in Section 9-175.

The Center is nevertheless liable for all real estate taxes assessed or levied against the subject property under terms of the lease that vests the Center with a legitimate leasehold interest in the subject property for 2000. More importantly, the records of the Cook County Assessor submitted as Applicant Ex. Nos. 1 and 2, clearly indicate that the

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12. Section 9-175 of the Property Tax Code states, in pertinent part, that "[t]he owner of property on January 1 in any year shall be liable for the taxes of that year...[.]" 35 ILCS 200/9-175.

Center was, in fact, the sole assessee of any and all real estate taxes levied against the subject property. Accordingly, it cannot be denied that applicant does have the requisite financial stake in the outcome herein necessary to provide it with standing in this case. Highland Park Women's Club v. Department of Revenue, *supra*.

The Assessor's records further indicate that the applicant was actually assessed for 2000 real estate taxes in error. Applicant Ex. No. 13. Thus, at a minimum, it would be fundamentally unfair to deny the Center standing to seek exemption from the 2000 real estate taxes that the Assessor mistakenly assessed against, and billed to, the applicant. Therefore, that portion of the Department's determination which found that applicant lacked standing to bring the instant exemption complaint should be reversed.

The Department nonetheless relies on the Department's decision in Intercultura v. Department of Revenue, Docket No. 98 PT 0180, in support of its position on the standing issue. However, the facts in this case are quite distinct from those in Intercultura.

In Intercultura, it was determined that the applicant-lessee, Intercultura, lacked standing to bring its exemption complaint primarily because the lease that governed Intercultura's interest in the property at issue was silent as to whether Intercultura or the owner-lessor was liable for real estate taxes. For this reason, the owner-lessor, who was not named as an applicant, became liable for such taxes by operation of Section 9-175 of the Property Tax Code. *See, supra*, at p. 13. Therefore, Intercultura lacked standing to raise an exemption claim that was properly brought by its lessor.

In this matter, the lease that governs applicant's interest in the subject property does make applicant liable for real estate taxes. Accordingly, unlike Intercultura, I need

not rely on Section 9-175 to decide the issue of standing. Rather, I may simply rely on the relevant lease provisions to conclude that this applicant does have standing to contest the 2000 real estate taxes from which it presently seeks exemption. Moreover, the evidence proving that this applicant was actually assessed for such taxes (Applicant Ex. Nos. 2, 13) was not present in the Intercultura record. Thus, the conclusions reached concerning the lessee's lack of standing in Intercultura are inapplicable herein.<sup>13</sup>

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13. Both the recommendation in Intercultura and the Department's initial determination herein contained language indicating that the applicant lacked standing because no leasehold assessment could be imposed against the lessee's interest in the subject property. Leasehold assessments arise pursuant to Section 9-195 of the Property Tax Code, which states as follows:

Except as provided in Section 15-55 [which governs exemption of property owned by the State of Illinois], when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as property that is not exempt, and the lessee shall be liable for those taxes.

35 ILCS 200/9-195. *See also*, Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue, 313 Ill. App.3d 469 (1<sup>st</sup> Dist., May 1, 2000).

In this context, the practical effect of imposing a leasehold assessment is to provide a lessee with standing to contest real estate taxes that would be assessed against its lessor in the absence of a leasehold assessment. However, the taxes currently in question were assessed against the lessee-applicant, which was also liable for their payment under the relevant lease terms.

Either of these factors constitute legally sufficient grounds to award the lessee-applicant standing in this case. Therefore, it is unnecessarily redundant for me to decide whether that same lessee-applicant should be awarded standing under the leasehold assessment statute.

## B. SUBSTANTIVE ISSUES

Section 15-40 of the Property Tax Code expressly bars exemption where real estate is leased or otherwise used with a view to profit. 35 ILCS 200/15-40. Whether real estate is “leased with a view to profit” depends in the first instance on the intent of the owner in using the property. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363, 371 (1944); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 922 (1<sup>st</sup> Dist. 1988). Thus:

... it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, “with a view to profit,” the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose, the tax-exempt status of the property continues even though the use may involve an incidental production of income.

Children’s Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). *See also*, Victory Christian Church, *supra*, at 922.

In order to apply this test, “one must look first to see if the owner of the real estate is entitled to exemption from property taxes.” Victory Christian Church, *supra* at 922. If the owner is so exempt, then “one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed.” *Id.* There is no question that the owner-lessor in this case, the Commissariat, is a duly constituted religious order that qualifies for exempt status under Section 15-40 of the Property Tax Code. Consequently, the analysis now focuses on the applicant-lessee and whether its use of the subject property was for exempt purposes and not with a view to profit. For the following reasons, I conclude that the subject property was not used for exempt purposes.



The question of whether applicant's use was for exempt purposes depends, in the first instance, on whether applicant, itself, qualifies as a tax-exempt entity, such as a duly constituted school,<sup>14</sup> religious society<sup>15</sup> or institution of public charity.<sup>16</sup> A "school," is defined for property tax purposes as "a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word." People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 188 (1956).

A "religious" society is, as noted above, one organized by "persons as a stated places for public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

An "institution of public charity" is one that, by definition, operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes

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14. Section 15-35 of the Property Tax Code, 35 ILCS 200/15-35, states, in relevant part, that "... all property of schools, not sold or leased or otherwise used with a view to profit, is exempt" from real estate taxation. 35 ILCS 200/15-35.

15. Section 15-40 of the Property Tax Code, 35 ILCS 200/15-40, provides, in relevant part, that "[a]ll property used exclusively for religious purposes ... [which is] not leased or otherwise used with a view to profit, is exempt" from real estate taxes. 35 ILCS 200/15-40.

16. Section 15-65 of the Property Tax Code, 35 ILCS 200/15-65, states, in substance, that all property owned by "institutions of public charity" is exempt from real estate taxation, provided that: (1)

expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

The first step in determining whether applicant qualifies as a school, religious society and/or institution of public charity for property tax purposes is to examine the language of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987). This language does indicate that applicant is organized, in part, for purposes of fostering “the ideals of the Slovenian heritage, based on Christian religious, ethical and cultural values.” Applicant Ex. No. 6-B.

The reference to “Christian religious ... values” does provide some evidence that certain aspects of applicant’s operations are founded on tenets promulgated by a duly constituted “religious” society. However, the religious society that actually promulgates those tenets, the Commissariat, is not the applicant in this case. Moreover, although applicant’s organizational documents indicate that three fathers from the Commissariat sit on applicant’s governing board, the Commissariat’s status as an Illinois not-for-profit corporation ultimately provides it with a legal identity that is separate and distinct from that of the Center, which is the applicant herein.

Illinois case law nonetheless recognizes that certain entities can qualify as exempt owners if their operations are directed and controlled by another tax exempt entity.

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such property is “actually and exclusively used for charitable or beneficent purposes[;]” and, (2) such property is “not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65, 15-65(a).

People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) (“Goodman”); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) (“Booker”).

The basic operational facts of Goodman and Booker are substantially identical: two tax-exempt public universities (the University of Illinois in Goodman; Southern Illinois University in Booker) were subject to statutory debt limitations that made it legally impossible for them to incur whatever long-term financing was necessary to purchase the properties in question. Goodman, *supra*, at 366, 368; Booker, *supra*, at 1067. These prohibitions did not apply to the respective Foundations, which obtained appropriate financing for the acquisition of, and held legal title to, each of the properties. Goodman, *supra*, at 366, 368; Booker *supra*, at 1063, 1066.

The organizational documents of the Foundation in Goodman recited, *inter alia*, that it was authorized to “act without profit as trustee of educational or charitable trusts” for the benefit of the University of Illinois. Goodman, *supra*, at 366. Those of the Foundation in Booker expressly stated, *inter alia*, that it was: (a) “to buy, sell, lease, own, manage, convey and mortgage real estate;” (b) to act, “*in a manner specified by the Board of Trustees of Southern Illinois University*” as the business agent of that Board in respect to the acquisition, management and leasing real property and buildings; and, (c) to “do such other acts and undertake such other enterprises as in the judgment of the [Foundation’s] Board of Directors shall tend to promote the interests and welfare of Southern Illinois University.” Booker, *supra*, at 1064 (emphasis added).

The SIU Foundation’s by-laws further stated, in substance, that the president of Southern Illinois University, or his personal designee, was to sit on the Foundation’s

governing board, as were a number of other directors personally appointed by the Chairman of the University's Board of Trustees and other high-ranking University officials. *Id.* at 1064-1065.

Based on these provisions, the Goodman and Booker courts concluded that the respective universities exercised sufficient direction and control over the Foundations so as to place equitable ownership of the properties in question in the universities. Goodman, *supra*, at 366, 372, 375; Booker, *supra*, at 1071. The same, however, may not be said in this case for several reasons.

First, applicant's organizational documents contain no language expressly stating that it is to carry out its business under the direction, control or supervision of the Commissariat. Nor do those documents indicate that the Commissariat is entitled to exercise the types of control or direction over applicant's operations that are inherent in a principal's authority to direct the operations of its business agent. Booker, *supra*, at 1064. Rather, because applicant's organizational documents merely state that the Center is to carry out its various activities "in cooperation with and under the guidance of the ... Commissariat." Applicant Ex. No. 6-B.

In addition, the record in Booker contained a stipulation indicating that: (a) upon retirement of the mortgage, the Foundation would reconvey the properties in question to the University, which would continue to operate them as student housing facilities in the same manner as they had been prior to conveyance; and, (b) control and operation of the subject properties was, at all times, to remain under the jurisdiction of the University's Housing Office. Booker, *supra*, at 1067.

Nothing in this record grants the Commissariat authority to actually operate the subject property under its own jurisdiction or the jurisdiction of the Roman Catholic Church that its priests ultimately serve. Furthermore, although applicant's lease with the Commissariat does state that the Commissariat will convey the subject property to applicant *if and when* the Commissariat ever ceases operations at its nearby Monastery (Applicant Ex. No. 5), this record fails to demonstrate that the Commissariat was in imminent peril of ceasing such operations during the tax year in question.

Moreover, it is one thing for a court to assume, as it did in Booker, that the University's duly appointed business agent would retire a mortgage on real estate in the normal course of fulfilling its fiduciary duties to manage that same real estate for the benefit of the University. It is quite another to speculate as to when, if ever, an extraordinary event, such as the one that triggers conveyance in this case, will actually come to pass, especially in light of the Commissariat's longstanding record of carrying out its duly appointed "religious" functions at the Monastery. Tr. pp. 43-44.

Based on the above, I conclude that the applicant, and not the Commissariat, ultimately retains control over its own operations. The Commissariat does nonetheless exercise certain advisory functions under the terms of applicant's by laws. One of these functions is having a Friar serving at the Commissariat act as the Center's spiritual director. However, the record contains no evidence establishing the scope of the spiritual director's duties. Nor does the record indicate what, if any, role the spiritual director plays in directing the Center's daily operations. Absent this information, applicant, which bears the burden of proving all elements of its exemption claim by clear and convincing evidence (People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968));

Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)), has failed to prove that the spiritual director's role is anything except that of an advisor.

It should also be noted that although the Commissariat retains three seats on applicant's governing board (Applicant Ex. No. 6-B; Tr. p. 13), the record is ultimately inconclusive as to whether this mere presence allows the Commissariat to effectively control applicant's operations. On the one hand, it cannot be denied that retaining three seats does provide the Commissariat with an appropriate means to exercise some degree of control. On the other, the exact extent of this control is not clear from the record, which does not contain any evidence that identifies the exact number of directors that served on applicant's governing board during 2000.

Applicant's by-laws do state its governing board shall consist of no less than 8 and no more than 23 directors. Applicant Ex. No. 6-B. Taking this as true, it becomes apparent that the Commissariat controls no less than 13%<sup>17</sup> and no more than 38%<sup>18</sup> of the seats on applicant's board. Neither of these percentages constitutes a majority. However, at the very least, I cannot evaluate the true extent of the Commissariat's influence relative to applicant's other directors, or place that influence in its proper context, without first knowing exactly how many directors serve on applicant's board.

Based on the above, I conclude that the types of direction and control that proved decisive in Goodman and Booker are not present in this record. Accordingly, the applicant Center fails to qualify for exempt status based on its relationship with the Commissariat. Consequently, it is the facts relative to the Center's operations, and not those of the Commissariat, that will determine whether applicant qualifies for exempt

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17.  $3/23 = .1304$  (rounded) or 13%.

status in the first instance and whether the subject property was primarily used for exempt purposes in the second.

It is once again appropriate to consider the wording of the Center's organizational documents when analyzing whether applicant qualifies for exempt status. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987). However, the mere statements of an institution's agents, or the wording of its governing documents, that evidence the institution's intent to be "exclusively" or primarily engaged "charitable," "religious" or other exempt activity are not determinative for present purposes. *Id.* Rather, it is the facts and proofs relative to the applicant's actual activities and operations that ultimately determine whether it qualifies for exempt status. *Id.*

The purpose statement contained within applicant's by-laws states, in part, that its organizational goals are to promote, encourage and foster those ideals of the Slovenian heritage that are based on "Christian religious, ethical and cultural values." Applicant Ex. No. 6-B. This statement provides evidence that at least one of applicant's organizational goals furthers a legitimate "religious" purpose. However, unlike the Commissariat, applicant itself is not a duly constituted religious order.

Nor does the applicant conduct most of its activities in a monastery, church or other facility primarily devoted "public worship, Sunday schools and religious instruction." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). Indeed, applicant's by-laws state, in relevant part, that its organizational purposes are to construct and then operate an assembly hall on the subject property, which is to be used

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18.  $3/8 = .375$  (exact) or 38%.

“as a meeting place for applicant’s members, their families and guests ..[.]” Applicant Ex. No. 6-B.

At a minimum, this statement, the substance of which also appears in the use provision of applicant’s lease with the Commissariat (Applicant Ex. No. 5), creates a conflict as to whether the *primary* focus of applicant’s operations, is directed toward: (a) helping the Commissariat carry out its Christian works; or, (b) providing a forum for the conduct of social activities and other secular pursuits that benefit its dues paying membership. For the following reasons, I conclude that the primary focus of applicant’s activities, and therefore its primary use of the subject property, is directed toward the latter.

Applicant’s by-laws provide for a paid membership structure, with applicant’s governing board being responsible for approving the applications of those who apply for membership and determining the amount of any membership dues that must be paid. Applicant Ex. No. 6-B. Although the by-laws do not contain any provision that authorizes the board to waive or reduce these membership dues or any other financial obligations that applicant requires of its members,<sup>19</sup> they do specifically authorize the board to terminate the membership of anyone who fails to pay.

This latter provision is, in effect, a penalty for non-payment which "lacks the warmth and spontaneity indicative of charitable impulse" (Methodist Old People’s Home v. Korzen, *supra* at 158), irrespective of whether the penalty is imposed under the auspices of a religious or secular institution. Moreover, the absence of language authorizing applicant’s governing board to waive or reduce membership dues or other

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19. Such obligations include, but are not limited to the registration fees that applicant charges to those who attend its ““Slomšek Slovenian School.” See, *infra*, at pp. 29.



financial obligations in cases of demonstrated financial need is likewise highly inconsistent with dispensation of “charity.” Small v. Pangle, 60 Ill.2d 510, 518 (1975). Because applicant does not make such accommodations, and effectively penalizes those who cannot pay, it is primarily a fraternal and/or social organization.

Such organizations generally do not qualify for exempt status because they operate primarily for the benefit of the limited class of persons who receive and maintain membership therein. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association, *supra*; Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1993). Consequently, any "charity" these organizations dispense in the course of their endeavors is but an incidental by-product of operations that otherwise do not benefit an "indefinite number of persons". Rogers Park Post No. 108, *supra*.

It also bears noting that applicant's by-laws state, and the testimonial evidence bore out, that applicant does not allow anyone except its dues paying membership, or persons sponsored by its dues paying membership, to use the facilities situated on the subject property. Applicant Ex. No. 6-B; Tr. pp. 51, 56. In addition, while applicant may allow non-members to attend its “Slomšek Slovenian School,” the registration fees that applicant charges to non-members is twice the amount that applicant charges its dues paying members.

Such a graduated fee structure is inconsistent with dispensation of “charity” in that it effectively discriminates against non-members. This is especially true where, as

here, that fee structure is part of a membership-oriented managerial system that does not waive or reduce fees in cases of demonstrated financial need. Small v. Pangle, *supra*.

More importantly, although the record does not contain any financial statements that disclose the exact amount of income applicant derived from membership dues during 2000,<sup>20</sup> it does contain testimony indicating that applicant had approximately 400 members, and charged membership dues of \$100.00 per family in 2000. Tr. pp. 54-55. Therefore, applicant's income from paid membership dues for that year was no less than \$4,000.00.

The absence of appropriate financial statements makes it difficult to place this \$4,000.00 figure in an appropriate context relative to applicant's overall financial structure for the tax year in question. However, all factual and legal inferences in property tax cases must favor taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, at a minimum, the fact that \$4,000.00 of applicant's total revenues for 2000 came from membership dues is consistent with and supports all the conclusions made above. Accordingly, I conclude that applicant does not qualify for exempt status, as either a "religious society" or an "institution of public charity" because, in the final analysis: (a) there is a very substantial secular component to applicant's operations; and, and, (b) applicant ultimately operates primarily for the benefit of its own dues-paying membership. Rogers Park Post No. 108 v. Brenza, *supra*; Morton Temple

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20. The financial statements included within Applicant Ex. No. 9 were for years prior to 2000. These statements are technically irrelevant to this case because each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4<sup>th</sup> Dist. 1987). Therefore, their contents does not alter any of the above analysis.

Association, supra; Albion Ruritan Club v. Department of Revenue, supra; Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, supra.

Section 15-40 of the Property Tax Code does nevertheless provide for the exemption of properties “primarily” used for “school and religious purposes.” 35 ILCS 200/15-40. The plain language of this specific provision and its placement within the context of the overall “religious” use exemption statute, indicate that it was designed to exempt properties that are primarily used to provide instruction in “religious” matters. Accord, People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). In this case, however, applicant provided instruction in both secular and “religious” subjects at the “Slomšek Slovenian School.”

The record is inconclusive as to whether instruction in secular subjects, such as culture, dance and language, was primary or incidental to instruction in “religious” matters. Applicant Ex. No. 14; Tr. pp. 49-50, 58. As a result, the level of proof applicant presented on this point does not rise to the level of clear and convincing evidence necessary to sustain its burden of proof. People ex rel. Nordland v. Home for the Aged, supra; Gas Research Institute v. Department of Revenue, supra. Therefore, this record fails to support the conclusion that the space wherein applicant conducted the “Slomšek Slovenian School,” was “exclusively” or primarily used for the narrow set of purposes necessary to exempt that space under Section 15-40 of the Property Tax Code.

Nor was the “Slomšek Slovenian School” space used for any the secular “school”-related purposes required to qualify it for exemption under Section 15-35 of the Property Tax Code. That exemption is available only to duly qualified, accredited “schools”<sup>21</sup> that relieve governmental burdens by offering education or instruction in subjects that the government would otherwise be required to offer in public institutions. Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1<sup>st</sup> Dist. 1997), *leave to appeal denied*, April 1, 1998; Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986).

Neither applicant, itself, nor the “Slomšek Slovenian School” maintained any accreditation from the State of Illinois during 2000. Tr. pp. 50-51, 58. More importantly, applicant has not cited any authority establishing, and my research fails to disclose, the existence of any governmental burden to provide education or instruction in the subjects applicant teaches at the “Slomšek Slovenian School.” Indeed, because those subjects include at least some instruction in religious practices followed at Slovenian churches, the government risks embroiling itself in the type of “excessive entanglement with religious institutions” forbidden under the First Amendment’s Establishment Clause<sup>22</sup> if it assumes such a burden.<sup>23</sup> See, Lemon v. Kurtzman, 403 U.S. 602 (1971); Lynch v.

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21. A “school,” is defined for property tax purposes as “a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.” People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 188 (1956).

22. The Establishment Clause, contained in the First Amendment to the United States Constitution, provides that “Congress shall make no law respecting an establishment of religion...[.]”

23. Nothing in this statement should be interpreted as implying that applicant, itself, qualifies as a religious institution. Prior analysis clearly demonstrates that it does not. Therefore, the intent of this statement is merely to assert that the Establishment Clause bars the government from assuming the types of burdens necessary to qualify applicant’s use of the “Slomšek Slovenian School” space for exemption under Sections 15-35 of the Property Tax Code.

Donnelly, 465 U.S. 668 (1984). Therefore, the “Slomšek Slovenian School” area was not used for the narrow set of purposes necessary to qualify it for exemption from 2000 real estate taxes under 35 ILCS 200/15-35.

This area also was not used for any purposes that qualify as “charitable” within the meaning of 35 ILCS 200/15-65 for several reasons. First, the record contains no evidence proving that applicant made any accommodations for those who were unable to afford the registration fees it charged to everyone who attended the “Slomšek Slovenian School.” More importantly, the amount of registration fees that applicant charged to non-members of the Center was exactly double the amount that it charged to members. Applicant Ex. No. 14.

Furthermore, virtually all of those who attended the “Slomšek Slovenian School” were members of the Center, or at, the very least, children of its members. Tr. p. 59. Under these circumstances, it is apparent that applicant operated the “Slomšek Slovenian School” primarily, if not solely, for the non-exempt purpose of providing ancillary cultural and other benefits to its dues paying membership and their families. *Accord, Rogers Park, supra*. Therefore, the area of the subject property that the Center used as its “Slomšek Slovenian School” was not “exclusively” used for “charitable” purposes, as required by Section 15-65 of the Property Tax Code during 2000.

With respect to the 2,750 square foot portion the subject property that the Center leased to SprintCom, it is noted that the applicant’s lease with SprintCom (Applicant Ex. No. 15) clearly indicates, and applicant does not dispute, that all of this area was used for commercial purposes throughout 2000. Therefore, this 2,750 square feet was not used for “religious,” “school,” “charitable” or other exempt purposes throughout that tax year.

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is appropriate to exempt those parts that are in actual, exempt use and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971). In this case, however, none of the areas of the subject property that applicant has identified, inclusive of: (a) the 2,750 square feet that applicant leased to SprintCom; (b) the area of the building improvement wherein applicant held the “Slomšek Slovenian School[;]” and, (c) all of the remaining building areas that the applicant-Center used to fulfill the member-oriented purposes set forth in its by-laws, were “exclusively” or primarily used for “religious,” “school” and/or “charitable” purposes as required by Sections 15-35, 40, and/or 15-65 of the Property Tax Code during the 2000 tax year. Therefore, I conclude that the entire subject property was not in exempt use throughout 2000.

Even if I could conclude otherwise, Sections 15-35, 15-40 and 15-65 expressly bar exemption where the property is leased or otherwise used with a view to profit. 35 ILCS 200/15-35, 15-40 and 65. The record in this case contains evidence proving that: (a) applicant rents out the Center’s facilities for wedding receptions and other social occasions hosted by its members or others who obtain sponsorship from its members; and, (b) applicant derives rental income by renting out the Center’s facilities for these purposes. Tr. pp. 51-52, 55-57. The record does not, however, contain any financial statements or other evidence disclosing the exact amount of rental income that applicant received by renting its facilities for these purposes during 2000.

Applicant bears the burden of proving all elements of its exemption claim by clear and convincing evidence. People ex rel. Nordland v. Home for the Aged, *supra*; Gas

Research Institute v. Department of Revenue, *supra*. One such element is that the property is not leased or otherwise used with a view to profit in violation of Sections 15-35, 40 and 65 of the Property Tax Code.

In one sense, a lease for profit is one where the property is rented for a specific non-exempt use, such as weddings or other private social functions. Rogers Park Post No. 108 v. Brenza, *supra*. In another sense, however, a lease for profit is one where the property is being used to produce income, even if the party who receives the income applies it to further an exempt purpose. Children's Development Center, Inc. v. Olson, 52 Ill.2d 332, 336 (1972). *See also*, Victory Christian Church, *supra*; People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

Applicant rented out the Center for private social functions during 2000. Tr. pp. 50, 56-57. Thus, the subject property was leased for profit to some extent. However, the exact extent to which the property was so leased is not apparent from the record, which does not contain any evidence that identifies the exact number of private social functions held at the Center. *See*, e.g. Tr. pp. 56-57.

More importantly, the record is totally devoid of any financial statements that disclose applicant's financial structure for the 2000 tax year.<sup>24</sup> Absent such a statement, I am unable to discern whether rental income was an integral or an incidental part of applicant's financial structure for that year.

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24. *See also*, footnote 20, *supra*, at p. 26.

All unproven matters in property tax cases must be resolved against the applicant, which bears the burden of proof. People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Therefore, at the very least, applicant has failed to prove the leasing-related uses that it made of the subject property were not with a view to profit.

In summary, applicant's status as *de facto* assessee of all 2000 real estate taxes levied against the subject property provides it with a "direct and substantial" stake in the outcome of this proceeding. Highland Park Women's Club v. Department of Revenue, *supra*. As such, applicant does not lack standing to contest the 2000 real estate taxes from which it currently seeks exemption. However, it is not entitled to an exemption from those taxes for the reasons articulated above. Therefore, the Department's initial determination in this matter, denying the subject property exemption from 2000 real estate taxes, should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that Cook County Parcel Index Numbers 22-22-102-004 and 22-22-102-005 not be exempt from 2000 real estate taxes.

Date: 10/8/2003

Alan I. Marcus  
Administrative Law Judge